

National Labor Relations Board

§ 102.30

or may refer the motion to the administrative law judge for ruling. The administrative law judge shall rule upon all such motions made at the hearing or referred to him by the regional director, in the manner set forth in § 102.25. The regional director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

WITNESSES, DEPOSITIONS, AND SUBPOENAS

§ 102.30 Examination of witnesses; deposition.

Witnesses shall be examined orally under oath, except that for good cause shown after the issuance of a complaint, testimony may be taken by deposition.

(a) Applications to take depositions shall be in writing setting forth the reasons why such depositions should be taken, the name and post office address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this section hereinafter referred to as the "officer"). Such application shall be made to the regional director prior to the hearing, and to the administrative law judge during and subsequent to the hearing but before transfer of the case to the Board pursuant to § 102.45 or § 102.50. Such application shall be served upon the regional director or the administrative law judge, as the case may be, and upon all other parties, not less than 7 days (when the deposition is to be taken within the continental United States) and 15 days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The regional director or administrative law judge, as the case may be, shall upon receipt of the application, if in his discretion good cause has been shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken and the time, the

place, and the designation of the officer before whom the witness is to testify, who may or may not be the same officer as that specified in the application. Such order shall be served upon all the other parties by the regional director or upon all parties by the administrative law judge.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, including any agent of the Board authorized to administer oaths. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two copies of said transcript, together with his certificate, in person or by registered or certified mail to the regional director or the administrative law judge, care of the chief administrative law judge in Washington, DC, the associate chief judge, in San Francisco, California, the associate chief judge in New York, New

York, or the associate chief judge in Atlanta, Georgia, as the case may be.

(d) The administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

(National Labor Relations Act approved July 5, 1935, 49 Stat. 449; 29 U.S.C. 151-166, as amended by Act of June 23, 1947 (61 Stat. 136; 29 U.S.C. Sup. 151-167), Act of Oct. 22, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), Act of Sept. 14, 1959 (73 Stat. 519; 29 U.S.C. 141-168), and Act of July 26, 1974 (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[24 FR 9102, Nov. 7, 1959, as amended at 45 FR 37425, June 3, 1980; 45 FR 51193, Aug. 1, 1980; 62 FR 1668, Jan. 13, 1997]

§ 102.31 Issuance of subpoenas; petitions to revoke subpoenas; rulings on claim of privilege against self-incrimination; subpoena enforcement proceedings; right to inspect and copy data.

(a) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Applications for subpoenas, if filed prior to the hearing, shall be filed with the Regional Director. Applications for subpoenas filed during the hearing shall be filed with the administrative law judge. Either the Regional Director or the administrative law judge, as the case may be, shall grant the application on behalf of the Board or any Member thereof. Applications for sub-

poenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. All petitions to revoke subpoenas shall be served upon the party at whose request the subpoena was issued. Such petition to revoke, if made prior to the hearing, shall be filed with the regional director and the regional director shall refer the petition to the administrative law judge or the Board for ruling. Petitions to revoke subpoenas filed during the hearing shall be filed with the administrative law judge. Notice of the filing of petitions to revoke shall be promptly given by the regional director or the administrative law judge, as the case may be, to the party at whose request the subpoena was issued. The administrative law judge or the Board, as the case may be, shall revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The administrative law judge or the Board, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(c) With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may